

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RODNEY K. JOHNSON,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER

11-CV-4060 (NGG)

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NICHOLAS G. GARAUFIS, United States District Judge.

Pro se plaintiff Rodney K. Johnson brought this action against the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c), seeking judicial review of the Social Security Administration's ("SSA") decision that he is not disabled and therefore not entitled to Disability Insurance Benefits ("DIB"). (See Compl. (Dkt. 1).)

On February 21, 2012, the Commissioner moved to remand the case to the SSA for further proceedings. (See Mot. to Remand (Dkt. 10).) The Commissioner argues that the case must be remanded for rehearing and further development of the record because the Administrative Law Judge ("ALJ") for the SSA failed to fulfill his obligation to evaluate the treating source's opinion and to develop the record regarding Johnson's mental impairment. (See Comm'r Mem. in Supp. of Mot. to Remand (Dkt. 11) ("Comm'r Mem.".) The Commissioner argues that remand, and not a determination of disability, is appropriate because the record does not contain persuasive proof of disability. (Id. at 15-17.) Johnson received notice of this motion (see Feb. 21, 2012, Comm'r Ltr. (Dkt. 9)), and has not opposed it.

Remand is appropriate "[w]here there are gaps in the administrative record or the ALJ has applied an improper legal standard." Rosa v. Callahan, 168 F.3d 72, 82-83 (2d Cir. 1999).

As argued by the Commissioner's motion, the SSA proceedings below suffered from both of these problems. Therefore, remand is appropriate. Accordingly, the Commissioner's motion is GRANTED and the case is REMANDED to the SSA for further proceedings.

SO ORDERED.

Dated: Brooklyn, New York
April 16, 2013

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge